

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

**RELIANT ENERGY HL&P,
A Division of Reliant Energy, Inc. 1/**

Employer

and

Case No. 16-RC-10389

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,
LOCAL UNION NO. 66, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/

3. The labor organization involved claims to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 5/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All regular full-time employees classified as Field Service Representatives employed at the following locations: Katy, Fort Bend, Brazosport, H.O. Clarke, Galveston, Bellaire, Humble, Baytown, Cypress, Magnolia Park, Spring Branch, South Houston, West Dallas, Greenspoint, and Sugarland.

EXCLUDED: Supervisors, leaders, clerical, meter readers, dispatchers, contractors and guards as defined by the Act.

DIRECTION OF ELECTION 6/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or

been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the [International Brotherhood of Electrical Workers, Local Union No. 66, AFL-CIO](#).

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names and addresses of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the [NLRB Region 16 Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002](#), on or before February 22, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 1, 2002.

DATED February 15, 2002 at Fort Worth, Texas.

/s/ Curtis A. Wells
Curtis A. Wells Regional Director
NLRB Region 16

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1. The name of the Employer appears as amended at hearing.
 2. Both the Petitioner and Employer submitted briefs, which were duly considered.

The parties stipulated, and I find, that during the past twelve months, a representative period, Reliant Energy HL&P, a Division of Reliant Energy Inc., is a Texas Corporation, with an office and place of business in Houston, Texas where it is engaged in the provision of electrical power. In the past twelve months, a representative period, it has derived gross revenues in excess of \$250,000 and has purchased and received at its Houston facilities goods and materials valued in excess of \$50,000 directly from points located outside the State of Texas.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner seeks to represent all regular full-time employees classified as Field Service Representatives (herein FSRs). At hearing, the Petitioner clarified that the petitioned-for unit consists of the FSRs employed at the following Employer locations: Katy, Fort Bend, Brazosport, H.O. (or Hiram) Clarke, Galveston, Bellaire, Humble, Baytown, Cypress, Magnolia Park, Spring Branch, South Houston, West Dallas, Greenspoint and Sugarland. Petitioner seeks to exclude supervisors, leaders, clerical, meter readers, dispatchers, contractors and guards as defined by the Act. At hearing, the parties stipulated that the leaders possess authority described in Section 2(11) of the Act and are supervisors as defined in the Act.

Contrary to the Petitioner, the Employer argues that the appropriate unit consists of its FSRs in its distribution operations, which excludes its West Dallas location. Consequently, the sole issue in dispute in this case is whether the FSRs at the Employer's West Dallas location are appropriately included in a unit with the other FSRs in the petitioned-for unit.

The petitioned-for unit consists of 114 employees and there are 84 employees in the unit urged appropriate by the Employer. There is no history of collective bargaining affecting any of the petitioned-for employees.

Overview of Managerial Structure

The record reflects the Employer is in the business of electricity distribution. The Employer maintains a Western Region and an Eastern Region, both of which are located in the Houston metropolitan area. The Employer's West Dallas service center is geographically located in the Employer's Western Region, but is considered part of the Employer's Business Services Division.

The Employer's Western Region

The Employer's Western Region consists of service centers in Cypress, Katy, Spring Branch, Bellaire, H.O. Clarke, Sugarland and Fort Bend, Texas. Vice President Doyle McQuillon heads the Western Region.

Each of the Western Region's service centers has its own service manager. The Bellaire service center employs nine FSRs, who report directly to Service Manager Floyd LeBlanc. The six FSRs who are employed by H.O. Clarke (or Hiram) service center report to Service Area Manager Marie Bogan-Anderson. The Employer employs four FSRs at its Fort Bend service center. These FSRs report directly to Field Operations Leader Rudy Aleman. Aleman reports to Service Area Manager Roger Garris. The Employer employs three FSRs at its Katy service center. The FSRs in Katy report to Service Area Manager Richard Grasshoff. In Spring Branch, the Employer employs six FSRs, who report directly to the Service Area Manager Martin Narendorf, Jr. The eleven FSRs employed by the Employer in Sugarland report to Service Area Manager S.J. Doehring. The Employer employs five FSRs at its Cypress service center. These FSRs are supervised by Field Operations Leader Rick Habernal, who reports to Service Area Manager Terry Finley.

The Employer's Eastern Region

The Employer's Greenspoint, Humble, Magnolia Park, Baytown, South Houston, Galveston and Brazosport service centers are located in the Employer's Eastern Region, which is headed by Vice President and General Manager Jim Schaefer.

Each of the seven service centers located in the Employer's Eastern Region has its own service area manager. The five FSRs who work at the Baytown service center are

supervised by a leader, Esther Garcia. Garcia, in turn, reports to Service Area Supervisor Keith Gray. The five FSRs employed at the Brazosport service center report to Operations Supervisor Cornelius Fisher, Jr. The five FSRs employed at the Galveston service center are supervised by a leader, Tommy Duke, who reports to Service Area Manager David Murphy. The Employer employs nine FSRs at its Greenspoint service center. These FSRs report to Leader Jay Carlile, who reports to Service Area Manager Frank Jeanes. The Humble service center's three FSRs report to Operations Supervisor J. B. Rogers. The South Houston service center employs eight FSRs who are supervised by Leader Mike Gossett. The Magnolia Park's seven FSRs are supervised by Leader Michael Adams, who reports to Operations Supervisor James Miller.

The Employer's West Dallas Service Center

As referenced above, the Employer's West Dallas service center is geographically located in the Employer's Western Region, but is considered part of the Employer's Business Services Division, which is headed by Vice President Joseph Lopez.

Sixteen of the thirty FSRs employed at the Employer's West Dallas location report directly to Supervisor Chris Tomme, who reports to Supervisor Walter Hunter. The remaining sixteen FSRs are supervised by Leader Ray Hall, who also reports to Supervisor Chris Tomme.

Deregulation of the Electric Utility

Determination of the appropriateness of the petitioned-for bargaining unit in this case requires a brief review of electric utility deregulation in Texas. Effective January 1, 2002, the retail market of electric utilities was deregulated in the State of Texas. As a result of deregulation, the electricity retail market has been separated into three parts: generation, retail and distribution. As referenced above, the Employer is now a distributor of electricity.

Since deregulation, a retail provider of electricity no longer may disconnect service because of non-payment. On December 14, 2001, the Employer ceased performing disconnects and reconnects in anticipation of deregulation. Under deregulation, the retail provider must drop the non-paying customer who would be assigned to a Provider of Last Resort (herein POLR) for service. Pursuant to deregulation, only the POLR may initiate a disconnect order and has discretion whether to do so. The Employer may perform disconnects and reconnects but must wait for the POLR to initiate such an action. The number of disconnect requests from POLR is uncertain since retail providers and POLRs are expected to have different deposit guidelines, payment and collection options.

The Employer expects to perform disconnects for the POLR until 2005 for retail accounts and 2004 for business accounts, depending on whether metering and meter services are separated into identifiable parts (such as meter reading, installing meters and maintaining meters) and priced so they may be performed by competing companies. The meter services are expected to be separated into identifiable parts (which is also called

“unbundling”) as early as January 2004 for commercial and industrial customers and as early as September 2005 for residential customers. If unbundling occurs, it is possible that the Employer might not continue to perform disconnect and reconnect work.

Traditionally, the electric utility disconnected service after a customer moved away and then reconnects for a new customer. Under deregulation, the Public Utility Commission (herein PUC) has directed electric providers not to disconnect service after a customer moves. As a result, there may be a five to seven-day delay in getting new customers assigned to a retail provider and there may be users of electricity who have not selected a retail provider, but are using energy. Because of this change, the Employer must obtain more meter reads in order to identify customer accounts and customer locations where, while there is no customer of record, there is electrical usage.

Job duties

Eastern and Western Region FSRs

The FSRs employed in the Employer’s Eastern and Western Regions perform essentially the same functions: turning on and off electrical service; performing light trouble work; performing special meter reads (such as when a customer disputes a meter reading); performing meter data reconciliation to verify company records; conducting investigative request orders; dealing with rate class disputes; and responding to customer questions. FSRs in the Eastern and Western Regions also disconnect meters for non-payment and reconnect meters after customer payment in circumstances where it is efficient to do so, such as when the disconnect or reconnect location was in close proximity to the service center.

The job duties of the Eastern and Western Region FSRs are not expected to change significantly because of deregulation and these FSRs are expected to continue to perform their regular day-to-day functions.

West Dallas FSRs

Until December 14, 2001, the West Dallas FSRs’ primary job duty was to disconnect meters for nonpayment and reconnect meters after payment was made. They would perform their disconnect duties in the morning and perform their reconnect services in the late afternoon or evening. Work orders would issue for a certain geographic area for purposes of efficiency and the FSRs from the West Dallas location would move around the service areas in a manner mirroring the meter readers. As referenced above, some FSRs located in other service centers performed disconnects and reconnects when the job was located closer to the other service center. The West Dallas FSRs performed about 90% of disconnects for the Employer.

PUC rules restrict the disconnection of electric service such as on extremely cold or extremely hot days and the day before a holiday. During the year 2001, there were no

weather restrictions on disconnects. In the year 2000, there were approximately 60 to 80 days where disconnects were restricted due to the weather.

During days of heat restriction, the West Dallas FSRs are assigned other tasks. Some West Dallas FSRs are assigned to leave notices on doors notifying customers that the electricity will be turned off if they do not pay. Other West Dallas FSRs perform meter readings, or are sent to supplement the field support representatives at other service centers. Those West Dallas FSRs who were sent to supplement other service centers, performed the same duties as the FSRs who regularly worked there.

West Dallas FSRs also assist other service centers when the system “goes down”, when additional help is required due to vacation scheduling and during the first five days of the months of May to September. Whether the West Dallas FSRs are available to assist has historically depended on the number of disconnects and reconnects that needed to be performed by the West Dallas FSRs. During the Summer 1997, a West Dallas FSR worked 60 days at the Greenspoint facility because of excessive weather conditions. While there, he occasionally performed light trouble work, special reads and meter data reconciliation. A seven-year Greenspoint FSR testified that Greenspoint has West Dallas FSRs working there “all the time.”

Currently, as the Employer is no longer a retail provider of electricity, the West Dallas FSRs assist in switching customers to new retail providers, such as Reliant Resources. In addition, the West Dallas FSRs currently assist the meter readers (who are also employed at the West Dallas facility). The increase in meter reading activity resulted from the need to have readings done as the Employer began to convert all of its current customers to one of the retail providers. It is anticipated that, after the heavy load of meter reading slows down, the West Dallas FSRs will be used (as in the past) to supplement the FSRs from the other service centers.

In the past, the Employer had not used its West Dallas FSRs to conduct investigatory work. The Employer anticipates that now it will also use its West Dallas FSRs to support its investigative function, which includes determining: whether a former customer left something on (and thereby is using electricity); whether someone moved in, failed to select a retail provider and is using electricity; and determining who needs to pay for the energy usage and to which retail provider the Employer will charge transportation costs.

The Employer also anticipates that in about three to twelve months its West Dallas FSRs will return to their function of disconnecting and connecting service from orders placed by the POLR. The Employer cannot predict the amount of such work since the POLR retains discretion whether to disconnect service. As referenced above, should unbundling of metering and meter services occur, it is possible that West Dallas FSRs’ disconnect and reconnect functions will be eliminated.

General Working Conditions

The record reflects that all of the Employer's FSRs, including those at the West Dallas service center, share similar general working conditions. First, FSRs receive the same level of compensation and the same benefits. The Employer posts job openings throughout its system and all interested employees are permitted to make application. Transfers to and from the West Dallas service centers and the other service centers are common. In fact, the Employer ceased disconnect and reconnect activity at West Dallas in 1995 and sent those FSRs to work at its other service centers. When disconnect and reconnect activity was resumed at the West Dallas service center in 1997, the Employer allowed former West Dallas FSRs and FSRs who did not previously work at the West Dallas service center to transfer there.

The record reflects the Employer does not use a company-wide evaluation form for its FSRs and that evaluations are performed at the service center level. West Dallas field service supervisors use a separate performance report based on an EXCEL spreadsheet, which is compiled by an internal work count. The Fort Bend service center (which is part of the Eastern Region), uses a mobile data service system. No evidence was presented concerning how the FSRs at the other service centers were evaluated.

While the FSRs at the Eastern and Western Region service centers work as late as 7 p.m., traditionally, the West Dallas FSRs work as late as 9 p.m. because of the demands of reconnect work. Currently, as there is no disconnect and reconnect work being performed, the West Dallas FSRs work an 8 a.m. to 5 p.m. shift.

When performing their disconnect/reconnect duties, the West Dallas morning shift FSRs received their work orders in paper form, while the evening shift FSRs received reconnect orders by mobile data electronic means. Currently, the West Dallas FSRs receive only paper work orders. The Employer's other FSRs receive their work orders electronically.

The West Dallas FSRs and one night employee who works from the Greenspoint service center take their work vehicles home with them. Other FSRs do not take their work vehicles home with them.

Both the West Dallas and the other FSRs possess similar technical skills. The West Dallas FSRs have between one and five years experience, while the Fort Bend FSRs are generally long-term employees of over twenty years experience. No evidence was presented concerning the tenure of the FSRs at the other service centers.

The Appropriate Bargaining Unit

The Board has consistently held that that in cases concerning a question of representation, the petitioned-for unit must be an appropriate unit, regardless of whether a broader unit is also appropriate. *Century Moving and Storage*, 251 NLRB 671, 679 (1980), citing *Pilot Freight Carriers, Inc.*, 223 NLRB 286 (1976). When determining whether a petitioned-for unit is appropriate, the Board considers whether the employees in the unit have a sufficient "community of interest". *Swift & Co.*, 129 NLRB 1391

(1961); *United States Steel Corp.*, 192 NLRB 58 (1971). Factors to be considered in making such a determination include: (1) degree of functional integration; (2) common supervision; (3) nature of employee skill and function; (4) interchangeability and contact among employees; (5) work situs; (6) general working conditions; and (7) fringe benefits. None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit. The Act, however, allows a union to petition for an appropriate unit, and does not require the “ultimate unit” or the “most appropriate” unit, even when a different than petitioned-for unit might be more appropriate. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987); *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966); *Capital Bakers*, 168 NLRB 904, 905 (1967). A petitioner’s desire as to the appropriate unit is relevant to consider, but cannot be dispositive in deciding upon the appropriate unit. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964), *Airco, Inc.*, 273 NLRB 348 (1984).

The record establishes that the petitioned-for unit is appropriate, as the West Dallas FSRs and the other FSRs share a sufficient community of interest. The West Dallas FSRs possess the same skills as the other FSRs. They have a significant interchange and contact with each other as demonstrated by the fact that both the West Dallas FSRs and the other FSRs perform disconnect and reconnect duties and the history of West Dallas FSRs assisting the Employer’s other FSRs in the performance of tasks unrelated to their disconnect and reconnect duties. This level of interchange is underscored by the Employer’s Vice President of Business Services James Lopez, who testified that while there were transfers between the West Dallas FSRs and the other FSRs, it was not a common occurrence because “they’re basically the same position.”

Importantly, both the West Dallas FSRs and the other FSRs turn electric service on and off. While the West Dallas FSRs usually perform such tasks in the event of a confrontational situation (when service is cut off for non-payment), the task of turning power on and off requires the same skill. Also, pursuant to PUC rules, neither the West Dallas FSRs nor the other FSRs are currently performing that task as the Employer has been instructed to keep power on, instead of turning the power off when a customer moves away.

As referenced above, the West Dallas FSRs and the Employer’s other FSRs use the same technical skills in performing their tasks and the West Dallas FSRs have not undergone any specific additional training in order to perform the functions at the other service centers. Indeed, as changes continue to be made as a result of deregulation, the Employer intends to have its West Dallas FSRs assume more of the same duties as its other FSRs.

The employees in the petitioned-for unit enjoy the same fringe benefits including health care and savings accounts and receive the same level of compensation. They currently work similar hours with both the West Dallas FSRs and the other FSRs working until 7 p.m. While it is expected that the some of the West Dallas FSRs will return to a 9 p.m.

shift ending time, I do not find this fact to compel a finding that the petitioned-for unit is inappropriate.

I also do not find it dispositive that the West Dallas FSRs have different supervision, since each region has its own vice president and each service center has its own center supervisor. Moreover, I note that the Employer seeks only to exclude the West Dallas FSRs, but presented no evidence of how the supervision of the West Dallas FSRs was markedly different than that of the other fourteen service center locations.

While the Employer seeks to distinguish the West Dallas FSRs from the other FSRs by virtue of the limited experience possessed by West Dallas FSRs, it presented no evidence concerning thirteen of the fourteen other service centers. Therefore, I cannot reach the conclusion that the FSRs from the other locations have much greater seniority than the West Dallas FSRs.

The Employer also argues that its West Dallas FSRs' job duties are in a state of flux and that in the future West Dallas FSRs will be used in the workforce to perform different assignments and support other personnel. The Employer, in making this argument, fails to mention that the assignment of the West Dallas FSRs to other locations is not a novel occurrence, as the record shows that these FSRs have been assisting other service centers in their regular duties and that the West Dallas FSRs are expected to return to their duties reconnecting and disconnecting power.

Based upon the foregoing, I find that the Employer's FSRs in the petitioned-for unit share similar working conditions, wages, benefits and possess similar skills. The record also reflects significant interaction among the employees in the petitioned-for unit. Accordingly, I find the employees in the petitioned-for unit share a sufficient community of interest and are appropriately included in the bargaining unit herein.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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